

REMARKS

The Office Action dated January 25, 2008, and made final, has been carefully reviewed and the following remarks are made in consequence thereof.

Claims 29-31 are pending in this application. Claims 1-31 stand rejected. Claims 1-28 have been canceled.

Initially, Applicants respectfully submit that, on Page 1 of the Office Action dated July 20, 2007 and on Page 1 of the Office Action dated January 25, 2008, the drawings submitted July 9, 2004 are neither accepted nor objected to. As such, Applicants respectfully request that Examiner acknowledge acceptance of the drawings submitted July 9, 2004.

The objection to Claim 30 due to informalities is respectfully traversed. Applicants have amended Claim 31 to address the issue raised by the Examiner in the Office Action. Support for such an amendment can be found, for example, in Figure 10 of Applicants' originally-filed application. For at least the reasons set forth above, Applicants request that the objection to Claim 30 be withdrawn.

The rejection of Claims 29-31 under 35 U.S.C. § 112, second paragraph, as being indefinite is respectfully traversed.

Applicants have amended Claims 29 and 30 to address the issues raised by the Examiner on Page 2 of the Office Action. More specifically, Claims 29 and 30, as amended, recite "facilitating dispensing" rather than "the facilitated dispensing."

Further, although the Examiner did not reject Claim 30 for reciting "generally," Applicants have amended Claims 29 and 30 to address the issue raised regarding Claim 29. More specifically, Applicants have amended Claims 29 and 30 to recite a "substantially tubular body." The term "substantially" is used in conjunction with another term to describe a particular characteristic of the claimed invention and is definite when one of ordinary skill in the art would know what was meant by "substantially." (See, MPEP § 2173.05(b)). Applicants describe a substantially tubular body at, for example, paragraphs [0077] and [0085] and Figures 8-10, in manner that one of ordinary skill in art would know what is meant by a substantially tubular body. As such, Applicants respectfully submit that Claims 29 and 30 are definite.

Accordingly, Applicants respectfully submit that Claims 29-31, as amended, satisfy the requirements of 35 U.S.C. § 112, second paragraph. As such, Applicants request that the Section 112 rejection of Claims 29-31 be withdrawn.

The rejection of Claims 29-31 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 15, and 28 of prior U.S. Patent No. 6,443,329 (“the ‘329 patent”) in view of Arasim (U.S. Patent No. 5,341,923) is respectfully traversed.

Applicants respectfully traverse the Examiner’s assessment of the differences between the claimed invention and the ‘329 patent. Under the proper analysis for obviousness type double patenting, the claims of the commonly owned U.S. Patent No. 6,443,329 must be compared with the claims of the present application, and the commonly owned patent is not prior art to the pending claims. The sole inquiry is whether the claims in the instant application would be obvious over the claims of the commonly owned patents. See MPEP § 804. The claims must be considered in their entirety in making an obviousness determination.

Considering only the claims of the ‘329 patent and the pending claims in the present application, differences are believed to be evident. As acknowledged on page 3 of the Office Action, the ‘329 patent does not describe “that the hanging support structure comprises at least one hanging aperture disposed in a wall of the tubular body.”

Applicants respectfully submit that the recitations of subject matter not found in Claims 1, 15, and 28 of the ‘329 patent is not obvious and is patentably distinct from Claims 1, 15, and 28 of the ‘329 patent. Considering only the claims of the ‘329 patent, as the obviousness-type double patenting analysis requires, it would not have been obvious to one of ordinary skill in the art to omit certain recitations and to include other recitations in a manner that would have resulted in the present claims. Accordingly, it is submitted that the present claims are not obvious over Claims 1, 15, and 28 of the ‘329 patent.

Moreover, neither claims 1, 15, and 28 of the ‘329 patent nor Arasim, considered alone or in combination, describes or suggests a dispensing container or a blank as recited in the presently pending claims. More specifically, Arasim describes a package (70) that includes a projecting suspension panel (22) that extends from a major side panel (12) and includes an aperture (38) defined therethrough. When the package (70) is erected, the

suspension panel (22) does not define a void (72) of the package (70). Rather, the major side panel (12) at least partially defines the void (72). The major side panel (12) does not include an aperture therethrough.

Claim 29 recites a dispensing container operably configured to be suspended from a support for facilitating dispensing of fluent material, the dispensing container comprising “a substantially tubular body defining and enclosing a cavity of the dispensing container, the cavity defining a fluent material containment volume . . . a nozzle receiving structure operably disposed in the bottom dispensing region, the nozzle receiving structure securely but releasably, restrainedly receiving a dispensing nozzle . . . and a hanging support structure defined through the tubular body to enable the dispensing container to be removably hung upon and supported by a projecting support member, wherein the hanging support structure comprises at least one hanging aperture defined in a wall of the tubular body, the at least one hanging aperture providing access to the cavity . . .”

More specifically, neither claims 1, 15, and 28 of the ‘329 patent nor Arasim, considered alone or in combination, describes or suggests a dispensing container that includes a hanging support structure defined through a tubular body and including at least one hanging aperture defined in a wall of the tubular body, wherein the hanging aperture provides access to a cavity defined by the tubular body. Rather, Arasim describes a package that includes a suspension panel that includes an aperture, wherein the suspension panel extends from a wall defining a void of the package such that the suspension panel does not define the void of the package. As such, the aperture for suspending the package in Arasim does not provide access to the void of the package. Accordingly, for at least the reasons set forth above, Claim 29 is submitted to be patentable over Claims 1, 15, and 28 of the ‘329 patent in view of Arasim.

Moreover, neither claims 1, 15, and 28 of the ‘329 patent nor Arasim, considered alone or in combination, describes or suggests the a blank for forming a dispensing container as recited in Claim 30, which recites a blank for forming a dispensing container operably configured to be suspended from a support for facilitating dispensing of fluent material, the blank comprising “a plurality of at least three substantially rectangular side wall panels operably connected to one another along longitudinally extending lines of weakness extending between adjacent ones of the side wall panels . . . to form, in part, a substantially tubular body comprising an opening in an upper portion of the substantially tubular body; at least one top closure panel . . . a plurality of bottom panels . . . to enable the formation of a

bottom dispensing region . . . the plurality of at least three side wall panels, the at least one top closure panel, and the plurality of bottom panels collectively forming the substantially tubular body . . . a nozzle receiving structure operably disposed in at least one of the bottom panels, the nozzle receiving structure securely but releasably, restrainedly receiving a dispensing nozzle . . . and at least one hanging aperture defined through one of the at least three substantially rectangular side wall panels, wherein, upon articulation of the blank into the dispensing container, the at least one hanging aperture enables access to the cavity....”

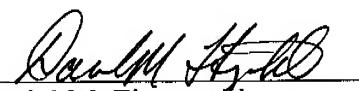
More specifically, neither claims 1, 15, and 28 of the ‘329 patent nor Arasim, considered alone or in combination, describes or suggests a blank for forming a dispensing container that includes at least one hanging aperture defined through one of at least three substantially rectangular side wall panels, wherein, upon articulation of the blank into a dispensing container, the hanging aperture enables access to a cavity of the dispensing container. Rather, Arasim describes a package that includes a suspension panel that includes an aperture, wherein the suspension panel extends from a wall defining a void of the package such that the suspension panel does not define the void of the package. As such, the aperture for suspending the package in Arasim does not provide access to the void of the package. Accordingly, for at least the reasons set forth above, Claim 30 is submitted to be patentable over Claims 1, 15, and 28 of the ‘329 patent in view of Arasim.

Claim 31 depends from independent Claim 30. When the recitations of Claim 31 are considered in combination with the recitations of Claim 30, Applicants submit that dependent Claim 31 likewise is patentable over Claims 1, 15, and 28 of the ‘329 patent in view of Arasim.

For at least the reasons set for above, Applicants respectfully request that the non-statutory obviousness-type double patenting rejection of Claims 29-31 be withdrawn.

In view of the foregoing amendment and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully requested.

Respectfully Submitted,


Daniel M. Fitzgerald
Registration No. 38,880
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070